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COUNTY OF SANTA CLARA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO
and COUNTY OF SANTA CLARA,

Plaintiffs,

vs.

DEPARTMENT OF HOMELAND
SECURITY; U.S. CITIZENSHIP AND
IMMIGRATION SERVICES; KEVIN
McALEENEN, Acting Secretary of Homeland
Security; and KEN CUCCINELLI, in his
official capacity as Acting Director of U.S.
Citizenship and Immigration Services,

Defendants.

Case No. 4:19-CV-04717 PJH

DECLARATION OF SARA CODY, M.D., HEALTH OFFICER AND DIRECTOR OF COUNTY OF SANTA CLARA PUBLIC HEALTH DEPARTMENT IN SUPPORT OF COUNTIES' MOTION FOR PRELIMINARY INJUNCTION

Hearing Date: October 2, 2019
Time: 9:00 am
Judge: Hon. Phyllis J. Hamilton
Place: Oakland Courthouse
Courtroom 3 - 3rd Floor
Trial Date: Not set

I, SARA H. CODY, M.D., declare as follows:

1. I have personal knowledge of the facts set forth in this declaration. I am a resident of the State of California. I submit this declaration in support of the City and County of San Francisco and County of Santa Clara's Motion for Preliminary Injunction. If called as a witness, I could and

1 would testify competently to the matters set forth herein.

2 2. I am the Director of the County of Santa Clara (“County”) Public Health Department,
3 as well as the Health Officer for the County and each of the 15 cities located within Santa Clara
4 County. I have held the Health Officer position from 2013 to the present and have held the Public
5 Health Department Director position from 2015 to the present. In these roles, I provide leadership
6 on public health issues for all of Santa Clara County and oversee approximately 450 Public Health
7 Department employees, who provide a wide array of services to safeguard and promote the health of
8 the community.

9 3. Prior to becoming the Health Officer for the County and each of its cities, I was
10 employed for 15 years as a Deputy Health Officer/Communicable Disease Controller at the County’s
11 Public Health Department, where I oversaw surveillance and investigation of individual cases of
12 communicable diseases, investigated disease outbreaks, participated in planning for public health
13 emergencies, and responded to Severe Acute Respiratory Syndrome (SARS), influenza A virus
14 subtype H1N1 (also known as “swine flu” or H1N1), and other public health emergencies.

15 4. The mission of the Public Health Department is to promote and protect the health of
16 Santa Clara County’s entire population. None of Santa Clara County’s 15 cities have a health
17 department. All 15 cities, and all Santa Clara County residents, rely on the Public Health
18 Department to perform essential public health functions. The work of the Public Health Department
19 is focused on three main areas: (1) infectious disease and emergency response, (2) maternal, child,
20 and family health, and (3) healthy communities. The Public Health Department’s work is guided by
21 core public health principles of equity, collaboration and inclusion, and harm prevention. This
22 work—in particular, infectious disease control and emergency response—is critical to the health of
23 the entire community countywide.

24 5. The Public Health Department also provides direct services that primarily benefit
25 low-income persons, children, people of color, and people living with chronic diseases, such as
26 HIV/AIDS. These services include screenings and treatment for highly contagious diseases
27 (including sexually transmitted diseases) and immunizations. We also provide case management for
28 mothers with high-risk pregnancies to ensure they are linked to appropriate care. To provide these

critical services, the Public Health Department depends heavily on reimbursement through public benefit programs, including programs established by the federal government such as Medicaid (known as Medi-Cal in California).¹ For example, the County's Public Health Department received \$6.1 million in Medi-Cal payments and \$2.4 million in Medicare payments in Fiscal Year 2016 for health care provided to patients with Medi-Cal or Medicare coverage. Given increases in the population of the County, these numbers have likely increased in more recent years.

A. Due to the Rule, County Residents Are Forgoing and Declining Critical Services at Great Cost to Themselves and to the County

6. I am generally familiar with the Department of Homeland Security's (DHS) rulemaking regarding Inadmissibility on Public Charge Grounds, including the proposed rule announced in September 2018 and the final rule published in August 2019. I am greatly concerned that the final rule will increase the spread of communicable diseases—a risk that is not at all hypothetical. The Public Health Department provides essential outreach and education, screening, case management and contact investigations, and ensures treatment for highly contagious diseases and in some cases treats people who have been exposed to contagious diseases. The health of our entire community is threatened when people forgo care for these diseases.

7. For example, the County has the fourth highest rate of tuberculosis (TB) in California, and California has highest rate of TB in the continental United States, and more cases of tuberculosis than any other state or territory. The majority of TB patients in the County are foreign born (due to exposure in countries where TB remains endemic). An estimated 160,000 people in the County (or nearly 10% of the County's population) may have latent TB infection (LTBI), that is, they are infected with the bacteria that causes TB, but do not have symptoms of the disease and are not contagious. Treatment of LTBI decreases the risk of developing TB disease by more than 90 percent, and thus during routine preventive care, the U.S. Preventive Services Task Force

¹ Medi-Cal is the name of the program by which California implements the Medicaid program in this state. To receive Medicaid services in California a person must enroll for Medi-Cal benefits.

1 recommends that primary care providers screen asymptomatic adults at increased risk for LTBI.
2 However, screening for LTBI requires individuals to seek primary care.

3 8. Since the proposed rule was announced, the County has seen cancellations of primary
4 care appointments, and the Public Health Department has witnessed County residents with positive
5 TB screens declining needed evaluation and LTBI treatment, even though its cost would be covered
6 by Medi-Cal or other public programs. Some patients have explained their decision to decline
7 treatment as motivated by fear of using government-funded services due to the new public charge
8 rule. Failure to treat LTBI imperils the health of both the individual patient and our entire
9 community. When County residents are discouraged from accessing primary care or preventative
10 treatment, there is a much greater risk that LTBI will progress to active TB, which is contagious. If
11 a person with LTBI progresses and develops active TB, they can then spread the TB infection to
12 people with whom they live or work or to anyone with whom they are in close and prolonged
13 contact. TB can be very severe and even fatal; nearly ten percent of patients who develop active TB
14 die. The spread of TB imposes enormous fiscal and health costs on the County and our community.
15 Indeed, while LTBI is relatively inexpensive to treat, an active case of TB costs tens of thousands of
16 dollars to treat. And the costs of treating an outbreak of TB can easily rise into the millions of
17 dollars.

18 **B. Critical Public Health Services that Require Participants to Apply for Other**
19 **Government-Funded Benefits Will Be Reduced Due to the Rule**

20 9. Many services provided by the Public Health Department require patients to apply for
21 other benefits for which they may be eligible. Patients who fear applying for or utilizing
22 government-funded benefits due to the Rule may now lose access to these other critical public health
23 services.

24 10. The Public Health Department provides essential HIV-related health services to
25 County residents under the federal Ryan White HIV/AIDS Program. As a payor of last resort, the
26 Ryan White Program conditions its funding on patients' enrollment in other programs for which they
27 are eligible—including Medi-Cal. Individuals who fear applying for Medi-Cal because of potential
28 immigration consequences under the Rule must then also forgo the Ryan White Program's assistance

1 to receive life-saving medication and associated support. Adequate treatment and adherence to the
 2 medication regimen is not only important for the health of the HIV-infected individual receiving
 3 treatment, it is central to prevention as well. Persons who are not adequately treated have a higher
 4 “viral load” and are at increased risk of transmitting HIV to others. Increased incidence of HIV
 5 translates to increased costs of acute, chronic, and preventive care for other newly infected people.

6 11. Together with the State, the Public Health Department administers the California
 7 Children’s Services program (CCS), which helps treat children and young adults with certain serious
 8 medical conditions such as cystic fibrosis and cerebral palsy. However, to qualify for CCS, an
 9 individual who CSS believes is eligible for Medi-Cal eligible must apply for Medi-Cal.² Due to this
 10 application requirement, County residents may lose access to critical CCS services if they are wary
 11 of applying for or utilizing Medi-Cal because of the Rule.

12 12. The Public Health Department also offers nutrition education to children in schools
 13 through the CalFresh Healthy Living Program. The program encourages children to increase their
 14 consumption of fruit and vegetables, to drink more water, and to boost their physical activity. Its
 15 creative interventions—including adding harvest items to school lunch menus each month,
 16 distributing flavored water, and offering structured physical activity at recess—help prevent costly
 17 lifelong conditions such as obesity and diabetes. Access to adequate nutrition leads to better health
 18 and life outcomes for children later in life. However, the Public Health Department can only offer
 19 CalFresh Healthy Living Program in schools where fifty or more percent of students apply for free
 20 or reduced-price lunches. If schools no longer meet this threshold because parents are afraid to
 21 apply for free or reduced-price lunches for their children, these CalFresh Healthy Living Program
 22 will no longer receive federal funding to serve the at-risk children in these schools.

23 **C. The Rule’s Administrative Costs.**

24 13. The Public Health Department has already expended over 150 staff hours trying to
 25 respond to the Rule, long before it takes effect. Staff have participated in and plan to participate in
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27
 28 ² California Department of Health Care Services, *Information About California Children’s Services (CCS)*,
<https://www.sccgov.org/sites/phd/services/CCS/Documents/Applications/application-eng.pdf>.

1 staff education and assessments related to the Rule. And we are having to expend additional
2 resources to determine what other actions are necessary to respond to elevated public health risks
3 stemming from the Rule.

4 14. For decades, the Public Health Department has expended significant resources to gain
5 the trust of the residents it serves. This trust building is necessary for the Public Health Department
6 to carry out its work protecting the public health, and it requires significant resources and staff
7 investments. I am greatly concerned that the Rule is undermining the trust that the Public Health
8 Department needs and has worked for decades to develop. I anticipate that the Public Health
9 Department will need to expend substantial resources conducting outreach, educating residents, and
10 rebuilding that trust over the coming months and years. To rise to meet these new and expanded
11 needs, the Public Health Department would need additional resources and funding.

12 I declare under penalty of perjury under the laws of the United States that the foregoing is
13 true and correct and that this declaration was executed on August 28, 2019 in San José, California.

14
15 Respectfully submitted,

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17 SARA H. CODY, M.D.
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